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Book Review: Butterworths Ontario Digest, Twelve Volumes and 1961 Cumulative Supplement, edited by Andrew R. Thompson and Gerald D. Sanagan

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Butterworths Ontario Digest. Twelve Volumes and 1961 Cumulative Supplement. Edited by ANDREW R. THOMPSON of the Ontario, Manitoba and Alberta Bars, Associate Professor of Law and GERALD D. SANAGAN of the Ontario Bar. Toronto: Butterworth & Co. (Canada) Limited. 1961. (\$270.00 *per set*)

The theory of stare decisis followed in all the common-law provinces and territories of Canada, and the increased amount of litigation attendant upon the tremendous growth in population during the last fifty years, have produced an extremely large body of decided cases. The major difficulty faced by the lawyer is how to find the cases. The most he can hope to learn in law school is the basic principles of law and the methods by which the "fountains of the law" can be discovered. Once he is in practice, the work of examining in detail and with any accuracy all the reported cases

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he needs to know in order to advise his clients on the existing law is a Herculean task. The only way he can carry out this essential research successfully and rapidly is to have at his disposal some ready means of access to the sources. To fulfill this need, law publishers in Canada, beginning in 1935, have prepared several general¹ digests or subject-books of Canadian case law. These digests encourage the use of Canadian authorities and contribute greatly to the development of a truly Canadian jurisprudence.²

Generally speaking digests contain a compilation of concise summaries of points in cases grouped under appropriate headings. They do not merely define words in precise terms with emphasis on brevity as do law dictionaries but “. . . present to the user the means of making his own definitions; and through subdivisions and cross-references put before him the whole scope of the subjects or topics examined. They differ from treatises in that they are less logical; cover a broader field; and in arrangement have been obliged to adopt alphabetical order for main titles, so that they may be conveniently used”.³ Of course, digests are merely compilations and cannot be thought of as substitutes for the source books.

A brief survey of Canadian digests and encyclopaedias reveals that today, lawyers are well equipped for legal research: *The Canadian Abridgment*, published by Burroughs & Company Limited, is “A Digest of Decisions of the Provincial and Dominion Courts, Including Appeals Therefrom to the Privy Council, but Excluding Decisions Based on the Quebec Civil Code”⁴ from the earliest time to date, and is certainly the most comprehensive

¹ Digests published before that date were of restricted scope only. See *infra*, footnotes 10 and 14.

² For a general survey, see Read, *The Judicial Process in Common Law Canada* (1959), 37 Can. Bar Rev. 265.

³ See Hicks, *Materials and Methods of Legal Research* (3rd ed., 1942), p. 261.

⁴ In Quebec, besides the annotated codes, of which there are several, one finds the following current general digests: Beauchamp, *Répertoire général de jurisprudence canadienne*, 4 vols. 1770-1913 (1914) and Supplements by St. Cyr, 1913-1925 (2 vols., 1931), Tellier, 1926-1935 (2 vols., 1935), Lesveque, 1935-1955 (2 vols., 1955), continued by the *Annuaire de Jurisprudence*. See also Stephens, *The Quebec Law Digest* (4 vols., 1878); Snow, *Consolidated Digest of the Decisions of the Courts of the Province of Quebec* (1899); Robertson, *Digest of all Reports in Lower Canada to 1863* (1864); Ramsay, *A Digested Index to the Reported Cases in Lower Canada* (1865); Lusignan, *Digest of Lower Canada Reports 1863-1871* (1872); Mathieu, *Table alphabétique des causes de la province de Québec jusqu'au 1^{er} janvier 1899* (2 vols., 1901-1902); St. Cyr, *Index — Digest of Montreal Law Reports 1883-92* (1905); Beauchamp, *Le répertoire de la Revue Légale* (1894); *Répertoire de la Revue de Jurisprudence* (1895-1908), (1908); Surveyer, *Index aux Rapports de Pratique* (1912); Denis, *Index Judiciaire 1900-1947* (2 vols., 1949); *General Index of the Quebec Judicial Reports*: Kirby, 1892-1898 (1900); Beauchamp, 1898-1908 (1909), 1908-1923 (1925); Guerin, 1923-1935 (1936?); Gagnon, 1941-1945 (1948?), (1935-1940 not published).

digest of its type available in Canada. After a number of changes in format and contents, the most noteworthy one being the inclusion of Quebec civil-law cases since 1936, it constitutes the basic tool of any lawyer whether he practises in Nova Scotia, Ontario, the Territories or even in Quebec. Tables of cases and statutes judicially noticed or considered add to its value. The last consolidation took place in 1955.

The All Canada Digest, first published like the *Canadian Abridgment* in 1935, is "A Complete Digest of Dominion Law Reports as well as of Every Canadian Case Decided by Each and Every Court of Canada, Both Federal and Provincial and by the Board of Railway Commissioners for Canada and the Canadian Appeals to the Judicial Committee of the Privy Council". Published by the Canada Law Book Company Limited, it has an index of cases judicially noted but covers only the years 1910 to date. The lack of any consolidation since 1944 sometimes makes it inconvenient to use.

Started in 1948 by the Carswell Company as a monthly publication, the *Canadian Current Law* digests "All Reported Cases in the Common-law Provinces and Leading Cases in the Province of Quebec". All changes in federal legislation of general interest and important changes in provincial legislation, and any significant orders in council and administrative regulations, are noted from month to month as well. Reference is also made to noteworthy articles in legal periodicals.

The *CCH Dominion Report Service*, first published in 1936 as an annual volume and subsequently consolidated in five volumes, is a loose-leaf digest of "every reported Canadian case". Biennial consolidations and a current volume keep the series up to date. Also available since 1959 is the Butterworths *Canadian Weekly Law Sheet*.⁵

⁵ There are also several indices and digests restricted to particular courts or topics. See, for instance, Coutlée, *Digest of Cases in the Supreme Court of Canada, 1875-1908* (2 vols., 1904-1909); Cassels, *Digest of Decisions of Supreme Court of Canada, 1875-1886* (1875-94); Cameron, *Digest of Supreme Court Reports (Canada), 1903-1917* (1918), Suppt. (1925); Johnson and Tormey, *Index to Supreme Court Cases, 1923-1950* (1951); Southall and Sanagan, *Index to Supreme Court Reports, 1876-1950* (2 vols., 1952), Suppt. 1951-1954 (1955); Morse, *Digest of Cases in Exchequer Court* (1924); Quain, *Digest of Cases in Exchequer Court, 1922-1946* (1948); McCrossan, Schultz and Harper, *Digest of Canadian Criminal Case Law* (1908); *Canadian Criminal Law Digest: 1907; 1913; 1920* by R. M. W. Chitty (1925); Supplements 1939, 1950; *Canadian Insurance Case Law*. Earliest times to 1935 (1935); O'Brien, *A Digest of Canadian Cases Relating to Railway, etc., 1902-1920* (1920); Wheeler, *Privy Council Cases, 1876-1891*, together with a *Precis of all Important Cases from the Supreme Court of Canada* (1893); Fox, *Digest of Canadian Cases Relating to Patent Trade Mark, etc., 1845-1933* (1933), 1933-1940 (1940); *Tax Appeal Board Cases. Index to Vols. 1-15* (1956); *Canadian Supreme Court Reports. Index 1876-1954* (2 vols. 1956). See also the following regional digests: Rolph, *Digest Western Law Reports* (1915); Power, *An Index-Digest of Western Practice Cases in*

Of a different nature is the *Canadian Encyclopedic Digest*, published by Burrows & Company Limited. The second Ontario edition purports to be "A Complete Digest on the Encyclopedic Plan of the Statute Law and Reported Decisions in the Ontario and the Maritime Provinces". The second Western edition covers the other common-law provinces. A volume of statutes judicially considered completes the work. The series is, properly speaking, neither a digest nor a textbook. What distinguishes the *Canadian Encyclopedic Digest* from the digests is its literary text. Instead of isolated summaries of points of law as revealed in cases and appearing in isolated paragraphs, ". . . we have a literary statement of the content of the paragraphs, purporting to do for the user what he must do when using a digest. Justification for each statement in the text is given by cases cited in footnotes".⁶ Yet, the *Canadian Encyclopedic Digest* partakes more of the nature of compilations than of exposition due to its scope and arrangement and the cooperative effort involved in its preparation.

"The encyclopaedia has advantage over the digest only to the extent that its text throws light on the rules of law that can be deduced from groups of cases—to the extent that it assists the lawyer in his thinking concerning the doctrine of those cases. If the text is incorrect, or has become obsolete, it may mislead the searcher, because it may divert him from the examination of cases in which a different and more recent doctrine may be found."⁷ Encyclopedias generally serve as case finders and as restatements of the law. They should not be cited as an authority in the courts.⁸

The most recent addition to this already large collection of source material in digest form and the immediate occasion for this review is the *Butterworths Ontario Digest*, published over the last five years. The *Digest* is "A Statement of the Case Law of Ontario from 1901, with Full Annotations"⁹ prepared under the competent

Civil Actions (1st ed., 1921, 2nd ed., 1953, Suppt. 1959); Fitzgerald, Synoptic Digest of Cases Reported in the Western Weekly Reports (1924); Fitzgerald, Digest of Cases in Dominion Law Reports, 1911-1920 (2 vols., 1920); Dominion Law Reports. Annotations consolidated from Dominion Law Reports. 1911-(1950). Rewritten and revised. 1928-51 (3 vols., 1951); Lear, Digest Canadian Case Law, 1881-99 (1900); 1901-05, and Annuals: 1909, 1910, 1911-12, 1912-13, 1900-21; Tremear, Canadian Ten-year Digest, 1901-10 (2 vols., 1911); Canadian Consolidated Ten-year Digest (2 vols., 1920); Canadian Consolidated Six-year Digest (1925).

⁶ Hicks, *op. cit.*, footnote 3.

⁷ *Ibid.*, p. 264.

⁸ See Lord Chancellor Haldane in *Davies v. James Bay Railway Company* (1913-14), 83 L.J.P.C. 339, at p. 342.

⁹ The *Butterworths Ontario Digest* contains all cases from the following series of reports: Ontario Law Reports, Ontario Reports, Ontario Weekly Notes and Ontario Weekly Reporter.

All Ontario cases from the following series of reports, since the beginning in 1901, have also been included: Canada Supreme Court Reports, Canadian Bankruptcy Reports, Canadian Patent Reporter, Criminal Reports (Canada), Canadian Reports Appeal Cases, Canadian Railway Cases, Canadian Railway and Transport Cases, Canada Tax Cases, Can-

editorship of Professor Andrew R. Thompson and Mr. Gerald D. Sanagan, editor, among other works, of *Canadian Cases* to the supplement of *Halsbury's Laws of England* and the *Canadian Converter* to it. The general editors were assisted in the preparation of the *Digest* by a large number of well-known practising lawyers and professional law teachers. The aim has been to have every title prepared by an editor fully experienced in the subject concerned.

The Ontario Digest comprises twelve volumes including a general index and a consolidated table of cases at the end. The cases are arranged systematically under titles, following the same general classification as *Halsbury's Laws of England*. This arrangement enables the subscribers to *Halsbury* quickly to obtain a digest of the Ontario cases cited in the *Canadian Converter* volume of the English series. To facilitate reference, the cases in the *Digest* are numbered consecutively throughout each volume. A table of cases showing the *Digest* numbers allocated to cases also appears at the beginning of each volume. The year of each case is included in the table to prevent confusion among cases with similar names. The cases can also be traced in the consolidated table of cases covering all the titles and appearing in volume eleven. All relevant reports are cited after the digest of a case including full citations of hearing in each court when the decision digested is that of an appellate tribunal. The digest is prepared from the report of the hearing in the highest court, except for example, where that court merely confirms the decision of the lower court without stating its reasons. Where statutes are mentioned, full references are included and all public Acts are cited by name together with the year and chapter number. Applications for leave to appeal have been treated as cases separate from the hearings of the substantive questions of law, except where no point of law was involved.

The most valuable and original feature of the work is that, following the digest of each case, there appears a list of cases in which consideration has been given by the courts to the decision digested. Here only the best report has been cited, but it is always possible to get the reference to other reports from the table of cases. The history of the case indicates whether it has been sub-

adian Criminal Cases, Dominion Law Reports, Dominion Law Reports (2nd Series), Fox's Patent Cases, Insurance Law Reports, All England Law Reports, Law Journal, Privy Council, Law Reports (England) Appeal Cases, House of Lords and Privy Council, Law Times and Times Law Reports.

Cases reported in the Canada Law Times, the Canada Law Journal, Clarke and Scully's Drainage Cases (1898-1903), Smith and Sayer's Drainage Cases (1904-1914), Price's Mining Commissioner's Cases, Godson's Mining Commissioner's Cases (1911-1917) are not digested in the series.

sequently applied, approved, considered, distinguished, doubted, followed or overruled. A chronological order of citations has been followed. This approach is far superior to having a separate volume of cases judicially considered. It is also worth mentioning that, where available, notes have been included of unreported appeals to the Privy Council.

It is unfortunate that the *Digest* does not cover all reported cases since 1901 has been chosen as an arbitrary cut-off date.¹⁰ Of course, with respect to many topics regulated almost exclusively by statute, it would have been useless to go back to September, 1792,¹¹ when the law of England was introduced in Upper Canada, but in other areas, as for instance conflict of laws, there are important cases decided in Ontario or by the Supreme Court of Canada before 1901 that are still good law in the province.¹²

There are 124 titles in the *Digest* ranging from absentees to wills and covering the usual topics found in the standard law classification. Reference to particular topics may be made from the table of contents at the beginning of each title or from the general index appearing in volume twelve. Cross-references are given throughout the work wherever appropriate, not only from one part of a title to another part of the same title, but also from one title to another, in order to avoid repetition of material.

From a practical point of view, too many titles have been taken by the editors. Why include titles devoted to federal subjects, where obviously lawyers will want to examine not only the cases decided in Ontario but also those from other jurisdictions? Just because Ontario courts have dealt with the law of citizenship or copyright, or with criminal law, does not seem to be necessarily a good reason for including these topics in the *Digest*. Of course, had the editors omitted cases on topics of this sort, they would not have complied with the avowed purpose of the *Digest* to state all the case law of Ontario from 1901 to date. Titles referring to federal matters will be of little use to the practitioner unless he completes his search for the cases by consulting other

¹⁰ Of course, the old Ontario digests can always be consulted. See, for instance, in Ontario: Robinson & Josephs, *Law Society Digest 1823-1880* (2 vols., 1880) and 1880-1884 (1884), continued by Smith and Joseph 1884-1887 (1887); Smith, Joseph and Cartwright 1880-1890 (1892); Smith, Brown and Cassels 1891-1895 (1896); Smith, Brown, Cassels and Rolph, *The Digest of Ontario Case Law 1823-1900* (4 vols., 1903), continued by Bell 1901-1905 (1906); Harrison, Robinson, *A Digest of Reports of All Cases Determined in the Queen's Bench and Practice Courts for Upper Canada from 1823 to 1851 inclusive* (1852), continued by Harrison and O'Brien 1851-1860 (1860). See also Cooper, *Equity Digest 1868-1873* (2 vols., 1873) and Cameron, *A Digest of Cases Determined in the Court of Queen's Bench 1829-1843*, 5 vols. in 1 (1840-1844).

¹¹ R.S.U.C., 1792-1840, c. 1.

¹² See, for instance, *Henderson v. The Bank of Hamilton* (1894), 23 S.C.R. 716; *Purdum v. Pavey* (1896), 26 S.C.R. 412.

digests. The same criticism applies when common-law titles are considered. Take for instance, contract or tort: will an Ontario lawyer be satisfied with cases decided in the province? Here again he will have to search elsewhere to make sure that he has not omitted a very important decision rendered, say in British Columbia or by the Supreme Court of Canada on appeal from Nova Scotia. English cases might also be relevant in these areas. The law of other common-law jurisdictions cannot be ignored in Ontario.

It is particularly with respect to Ontario statutory law and purely local matters that the *Digest* justifies its purchase. For instance, titles such as appeals, assessment, conditional sales, highway traffic, limitation of actions, practice and pleading, and so on, that are more than others of a provincial nature, are excellent and an indispensable aid to an Ontario practitioner.

In the Preface to the second edition of the Ontario *Canadian Encyclopedic Digest*, the Hon. James C. McRuer, Chief Justice of the High Court of Ontario, wrote: "The value of a digest depends on a clear and accurate recognition of the principles dealt with in the decided cases and an equally clear and accurate statement of those principles."¹³ I believe that this statement aptly describes one of the basic characteristics of *Butterworths Ontario Digest* as the cases are exceptionally well digested. Where two or more separate points are decided in a particular case, self-contained and independent digests are provided, one for each point, and these appear separately under the relevant headings.

To conclude, the *Digest* is well done, comprehensive and, as far as I have been able to ascertain, accurate. The presentation and printing is also excellent and the price is reasonable, considering the amount of time it will save a practitioner just to check the history of a particular case or various annual volumes or consolidations of other digests and the tremendous efforts and expense that have been involved in the preparation of a digest of more than 25,000 Ontario cases. The publishers are also issuing an annual cumulative supplement of all the current cases so as to keep the *Digest* up to date.

The legal theorist will no doubt deplore a return to the sectionalism that prevailed in Canada in the early part of the century when so many digests were restricted to the authorities of a single province.¹⁴ Legal parochialism among the common-law provinces

¹³ (1949), Vol. 1.

¹⁴ In addition to Ontario, *supra*, footnote 10, see also in New Brunswick: Stevens, *Analytical Digest of the Decisions of the Supreme Court of Judicature of the Province of New Brunswick* (3rd ed., 1897); Porter, *Digest of New Brunswick Case Law* (1918); in British Columbia: Bird, *Digest of British Columbia Reports* (1906); Mayers, *Digest of British Columbia Case Law* (1916), continued by Whiteside (1933), McTaggart

is unfortunate even in the field of statutory law for it tends to frustrate the improvement of the law by discouraging consideration of the new solutions adopted elsewhere.

In legal research, digests have a well-established place and I am sure that in spite of its restricted scope, *Butterworths Ontario Digest* will be of great service to the legal profession.¹⁵

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(1953); in Manitoba: Ewart, *Digest of Manitoba Law Reports* (1900), continued by Taylor and Patterson (1913); in Nova Scotia: Congdon, *A Digest of the Nova Scotia Reports* (1890), continued by Armstrong (1903); Geldert (1910); Graham (1940).

¹⁵ The library of an Ontario lawyer, whose office is too far for convenience from the Osgoode Hall Law Library, the Supreme Court of Canada, or one of the County or District Association libraries, should include at least the following series: The Statutes of Ontario and Regulations, the Statutes of Canada and Statutory Rules and Orders, the Ontario Reports, Supreme Court Reports, Dominion Law Reports, Canadian Abridgment, the Ontario Digest Annotated and Halsbury's Laws of England (including the Canadian Converter) or the English and Empire Digest. To these should be added the Canadian Bar Review and a few selected textbooks, an expense of approximately \$6,500.00.